

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

EMMANUEL JEAN RODRIGUEZ,

Plaintiff,

v.

DENNIS LEVINSON, et al.,

Defendants.

Civil Action No. 21-18138 (RBK) (SAK)

**OPINION**

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KUGLER, United States District Judge:

Plaintiff, Emmanuel Jean Rodriguez, is presently confined at the Atlantic County Justice Facility, in Mays Landing, New Jersey. He seeks to bring this civil action *in forma pauperis*, without prepayment of fees or security. The Prison Litigation Reform Act of 1995 (the “Act”), which amends 28 U.S.C. § 1915, establishes certain financial requirements for prisoners who are attempting to bring a civil action *in forma pauperis*.

Additionally, the Prison Litigation Reform Act prohibits a prisoner from bringing a civil action *in forma pauperis*:

if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). Thus, under the statute, if a prisoner has three or more dismissals under 28 U.S.C. § 1915(e), he cannot proceed unless he is in imminent dangers of serious physical injury at the time he files the complaint. *See Goodson v. Kardashian*, 413 F. App’x 417, 419 n.2 (3d Cir. 2011) (per curiam) (citing *Abdul-Akbar v. McKelvie*, 239 F.3d 307, 312 (3d Cir. 2001)).

Recently, the Supreme Court has clarified that “[a] dismissal of a suit for failure to state a claim counts as a strike, whether or not with prejudice.” *Lomax v. Ortiz-Marquez*, 140 S. Ct. 1721, 1727 (2020) (“A strike-call under Section 1915(g) thus hinges exclusively on the basis for the dismissal, regardless of the decision’s prejudicial effect.”).

With those principles in mind, as the Honorable Renée M. Bumb, U.S.D.J., held in an Opinion denying Plaintiff *in forma pauperis* status in a previous matter:

Plaintiff appears to have at least four strikes under this provision. Plaintiff acquired the[se] strikes in the following cases: *Rodriguez v. Sandson et al.*, [Docket No. 13-7055 (RMB)] (D.N.J. Dec. 12, 2013) (ECF Nos. 2 and 3) (dismissing case with prejudice based on immunity and failure to state a claim); *Rodriguez v. Sandson et al.*, [Docket No. 13-7056 (RMB)] (D.N.J. Dec. 12, 2013) (ECF Nos. 2 and 3) (dismissing case with prejudice based on immunity and failure to state a claim); *Rodriguez v. Morse et al.*, [Docket No. 13-7057 (RMB)] (D.N.J. Dec. 12, 2013) (dismissing case with prejudice based on statute of limitations, immunity, and failure to state a claim); and *Rodriguez v. DeLury et al.*, [Docket No. 13-7058] (dismissing case with prejudice based on immunity). In each of these cases, the time period for appeal has expired.

(*Rodriguez v. State of New Jersey*, No. 15-6708, ECF No. 2 (D.N.J. Sept. 30, 2015)).

Accordingly, Plaintiff is a litigant with at least three strikes under § 1915(g). Thus, § 1915(g) precludes him from proceeding *in forma pauperis* in this case unless he alleges facts to show that he is in imminent danger of serious physical injury.

Applying that standard here, the Complaint does not allege that Plaintiff is in imminent danger of serious physical injury. Instead, the Complaint raises general grievances regarding Atlantic County’s legal system. Consequently, because the Complaint does not suggest that Plaintiff is in imminent danger of serious physical injury, he is not excused from the § 1915(g) restrictions.

For all of those reasons, the Court will not permit Plaintiff to proceed *in forma pauperis* and will administratively terminate the case. Plaintiff shall have an opportunity reopen this action by paying the \$402.00 filing fee within thirty days.

Dated: 7 October 2021

/s Robert B. Kugler

ROBERT B. KUGLER

United States District Judge